

BERNARD W. CROWE

IBLA 79-122

Decided March 27, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease, U-38312-A.

Affirmed.

1. Oil and Gas Leases: Termination

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

2. Oil and Gas Leases: Termination—Oil and Gas Leases: Reinstatement

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

3. Oil and Gas Leases: Termination—Oil and Gas Leases: Reinstatement

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. This Board has repeatedly held that reasonable diligence has not been exercised where a rental payment is posted at a time that one could not assume delivery before the statutory terminal date of the lease.

4. Oil and Gas Leases: Termination—Oil and Gas Leases: Reinstatement

Lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee.

APPEARANCES: Bernard W. Crowe, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bernard W. Crowe appeals the decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U-38312-A. The lease was terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of the lease was October 1, 1978, however, because October 1 fell on a Sunday, the rental payment was due October 2. Appellant's payment envelope was postmarked in Georgia September 30, 1978, and received in the Utah Office on October 3, 1978. Accordingly, appellant was advised that the lease had terminated automatically by operation of law. 30 U.S.C. § 188(b) (1976).

Appellant timely petitioned for reinstatement, stating that the check was mailed "in plenty of time," and that postal inefficiency was responsible for the delay. By decision dated November 3, 1978, the petition for reinstatement was denied, and this appeal followed.

The annual rental for an oil and gas lease must be paid in advance. 30 U.S.C. § 226(d) (1976). Stated differently, the rental payment must be received in the BLM office on or before the anniversary date of the lease.

[1] "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *." 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1.

[2] A lessee may, however, be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting rental is justifiable. 30 U.S.C. § 188(c) (1976). Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied. See, e.g., Albert R. Fairfield, 34 IBLA 132 (1978); Jones K. Mullinax, 35 IBLA 73 (1978); James Donaghue, 25 IBLA 251 (1974).

[3] Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c)(2). As we earlier noted, appellant's envelope was postmarked September 30, a Saturday. As October 1, 1978 was a Sunday, the rental payment was due in the proper BLM office before 4 p.m., October 2, the next official working day. 43 CFR 3108.2-1(a). It has not been shown by appellant that mail routinely travels from Atlanta, Georgia, to Salt Lake City, Utah, in 2 days or less. This Board has repeatedly held that reasonable diligence has not been exercised where a rental payment is posted at a time that one could not assume delivery before the statutory terminal date of the lease. Ronald C. & Mary A. Hill, 38 IBLA 315 (1978); J. R. Oil Corp., 36 IBLA 81 (1978); Adolph Muratori, 31 IBLA 39 (1977); William N. Cannon, 20 IBLA 361 (1975). We therefore find that appellant failed to exercise reasonable diligence in remitting this rental payment.

[4] Lack of reasonable diligence may be justifiable if it appears that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. See cases hereinbefore cited, supra.

In this regard, appellant has offered no argument or reason in justification of his lack of diligence.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Douglas E. Henriques
Administrative Judge

I concur.

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result, because I do not feel appellant has submitted sufficient information on which to predicate relief. The postmark shows only that the check was mailed by or before "P.M. September 30, 1978," a Saturday. I do not agree that the postmark is conclusive as to the date of mailing, but we have no definitive information as to when the check was actually sent.

Joseph W. Goss
Administrative Judge

